



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-91-10 et seq.
<b>Regulation Title:</b>	Facility and Aboveground Storage Tank (AST) Regulation
<b>Action Title:</b>	AST Regulation

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary\*

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The existing regulation is being amended to improve clarity and make the requirements more easily understandable by the individuals and entities affected and to bring applicable portions of the regulation into conformity with related laws and regulations. The existing regulation: (i) establishes requirements for registration of facilities and individual petroleum Aboveground Storage Tanks located within the Commonwealth; (ii) develops standards and procedures to prevent pollution from new and existing ASTs; and (iii) provides requirements for the development of facility oil discharge contingency plans for facilities with an aggregate capacity of 25,000 gallons or greater of oil.

### Basis\*

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory*

*or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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State law requires the Board to maintain an inventory of AST facilities and authorizes the Board to develop registration regulations for that purpose. The statute does not specify minimum regulation requirements.

State law requires that AST facility operators file and obtain Board approval of an Oil Discharge Contingency Plan (ODCP) as a condition of operation for the facility, and requires that the ODCP conform to requirements and standards determined by the Board. The statute does not specify minimum ODCP requirements.

State law mandates that the Board adopt regulations for pollution prevention and specifies minimum requirements for that purpose. The pollution prevention section of the regulation includes all of the minimum requirements specified in the law and also requires that the operator maintain in good condition the "secondary containment" that is specified in the operator's approved ODCP.

There is no direct mandate for AST regulations in Federal environmental statutes; however, federal regulations (such as 40 CFR 112 and 29 CFR 1910.106) and industry standards (such as API 653 and API 570) contain quite a number of requirements related to AST construction and operation. Many of those federal requirements are similar in their purpose and effect to the requirements envisioned by the State law's pollution prevention and ODCP mandates.

Therefore, every attempt has been made to make the requirements of the State's AST regulations consistent with requirements already contained in those federal regulations and industry standards.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

### **Purpose\***

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The regulation develops the standards and procedures necessary for facility operators to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks. These standards and procedures incorporate accepted codes, industry practices and standards. The regulation establishes the requirements for facility contingency plans. Plans must address the effect of oil discharges on the environment and public health and safety. The oil discharge contingency plans will ensure that facility operators can take steps necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, cleanup and mitigate an oil discharge within the shortest feasible time. The regulation provides registration requirements for facilities and aboveground storage tanks that contain oil. The Groundwater Characterization Study (GCS) and GCS well monitoring requirements of the regulations apply to individual ASTs with an aboveground storage capacity

of 1 million gallons or greater. This regulation continues to protect public health and safety by implementation of measures to prevent and mitigate the effects of catastrophic oil spills. The regulation has no impact on the institution of family and family stability. The regulation is clearly written and easily understandable, however, we are proposing some minor changes to improve its clarity where potential interpretation issues have been identified.

The primary goal for amending this regulation is to improve its clarity where potential interpretation issues have been identified, make the requirements more easily understandable by the individuals and entities affected, and to bring applicable portions of the regulation into conformity with related laws and regulations.

### Substance\*

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

#### 9 VAC 25-91-10. Definitions.

- The following definitions are added for clarity: Alteration, Annually, Best available technology, Change in service, Double walled AST, EPA, Reconstruction, Repair, Relocation, and Retrofitted.
- The following definitions are amended for clarity: Flow-through process tank, Major repair, Oil, Operator, State waters, Storage capacity, and Vaulted tank
- The definition of Tank Vessel was removed because it is no longer applicable to the regulation.

#### 9 VAC 25-91-20. Applicability

- Subsection B1 is amended for clarity by removing language that facilities with and aggregate capacity of 1320 gallons are regulated. The 1320 gallon language is a carry over from repealed regulations that regulated 110 gallon AST and greater. The existing regulation regulates ASTs greater than 660 gallons.

#### 9 VAC 25-91-30 Exclusions

- Amended language in B & C for clarity.

#### 9 VAC 25-91-40 Compliance dates

- Amended references to number days of the effective date to the actual date.
- Deleted E. for clarity.

#### 9 VAC 25-91-50 Statement of purpose

- Removed reference to 1320 gallons.

#### 9 VAC 25-91-60. Administrative fees.

- Deleted the requirements for registration fees for ASTs.

#### 9 VAC 25-91-70

- Amended term cognizant for clarity.

## 9 VAC 25-91-100. Registration requirements.

- Amended subsections C1a and C2 for clarity by adding language that identifies the owner as responsible for registering the AST. Amended applicable sections of the regulation to read "the operator who is the owner." The existing language does not address who is to register the AST. Amended all sections of the regulation by deleting all references to authorized representative.
- Amended G. to remove the reference to BOCA and NFPA 30 code.

## 9 VAC 25-91-110. Notifications.

- Amended section A for clarity by adding the terms retrofit, alteration, relocation, and closure. These terms were not previously defined. The existing language only addresses major repairs, change in service, and upgrades.
- Amended section B to include with the notification, copies of permits and records of inspections required by the Uniform Statewide Building code.

## 9 VAC 25-91-120. Aboveground storage tank closure.

- Amended section A by deleting reference to the BOCA and NFPA Codes to be consistent with reference to the Uniform Statewide Building Code.

## 9 VAC 25-91-130. Pollution prevention standards and procedures

- Amended subsection A1b and B1b to include temperature correction of inventory in the investigation procedures for the reconciling of variances greater than 1%.
- Amended subsection A1c and B1c by deleting the requirement to include temperature correction of daily inventory.
- Amended subsection A2 and A3 by requiring the operator to remedy unsatisfactory facility and equipment conditions observed in the formal inspection or reinspection.
- Amended subsection A4a and B2a for clarity by deleting the term dike and berm from secondary containment and adding other methods to contain a discharge for detection and cleanup.
- Amended A4 and B2 by adding a certification statement for Professional Engineers approving the condition of the secondary containment.
- Amended A 6 to remove reference to BOCA & NFPA 30.
- Amend A7 & B5 to include 14 days as an alternative time limit for facility inspections that are not conducting normal operations on a daily basis.
- Amended subsection A7d & B5d by requiring the operator to remedy unsatisfactory facility and equipment conditions observed in the inspection.

9 VAC 25-91-140 Performance standards for aboveground storage tanks newly installed, retrofitted, relocated, or brought into use.

- Added subsection E1 to address retrofitted ASTs and E2 for relocated ASTs

## 9 VAC 25-91-150 Recordkeeping and access to facilities.

- Added subsection A7 to keep all records relating to facility and tank inspections.

## 9 VAC 25-91-160. Variances to the requirements of Part III (9 VAC 25-91-130 et seq.)

- Amended section B to require the petitioner rather than the owner to submit variance requests.
- Amended section D1 to include double walled pipe. ASTs totally off ground with all associated piping above ground or with all double walled piping are excluded from the requirement for inventory control.
- Amended section D8 to exclude vaulted tanks from inventory control and extend the daily and weekly inspection criteria to 31days.
- Added section D11 to exclude double walled tanks from inventory control and extend the daily and weekly inspection criteria to 31days.

#### 9 VAC 25-91-170. Contingency plan requirements and approval.

- Amend section A to clarify that a facility can not operate without an oil discharge contingency plan.
- Amend section A.21 to include security measures associated with homeland security.
- Amend section E.3. to include the method approved to limit and contain the outflow of oil as a significant change to the ODCP.

#### 9 VAC 25-91-180 Groundwater characterization study (GCS)

- Amended section A to delete reference to section 9 VAC 25-91-170 A.13.a of the oil discharge contingency plan.

#### 9 VAC 25-91-190 GCS well monitoring

- Amended section B to reference the requirements of 9 VAC 25-91-190 and 9 VAC 25-91-170A.18 that apply.

#### 9 VAC 25-91-210. Referenced publications

- Amended section A by removing reference to the National Fire Protection Association (NFPA) Standards and the Building Officials & Code Administrators International (BOCA) National Building Code and replacing it with the Uniform Statewide Building Code and its referenced model codes and standards. This brings consistency to the regulation with the Department of Housing and Community Development.

### Issues\*

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

This regulation continues to protect public health and safety by implementation of measures to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks as well as to prevent and mitigate the effects of catastrophic oil spills. There are no potential issues that may need to be addressed as a result of the proposed amendments to the regulation.

### Locality Particularly Affected\*

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There is no locality particularly affected by the amendments to the regulation.

### Public Participation\*

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.*

The Board is seeking comments on the proposed amendments, including the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. Oral comments may also be submitted at the public hearing. In order for written comments to be considered comments must be received by the close of the comment period. In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.*

The only fiscal impact is the elimination of the registration fee, which is \$25 for an individual AST and does not exceed \$100 per facility. It is an administrative burden on the agency as well as the regulated community to continue implementing the fee.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

#### **9 VAC 25-91-10. Definitions.**

"Alteration" means any cutting, burning, welding, or heating operation on a tank that changes the physical dimensions and/or configuration of the tank.

"Annually" means once per calendar year.

"Best available technology" means state of the art equipment, materials, and technology, that are cost effective, proven effective, reliable, and compatible with the safe operation of the facility and that are designed, installed, operated, and maintained according to good engineering practices and industry standards.

"Change in service" means a change from previous operating conditions involving either properties of the stored product such as specific gravity or corrosivity and/or service conditions of temperature and/or pressure.

"Double walled AST" means an AST having an inner and an outer wall with an interstitial space (annulus) between the walls and having means for monitoring the interstitial space for a discharge.

"EPA" means the United States Environmental Protection Agency.

"Major repair" means any alterations that refer to operations that requires cutting, additions to, or removal or replacement of the annular plate ring, the shell-to-bottom weld or a sizable portion of the AST shell. Within this context, major repairs and major alterations would include without limitation: (a) The installation of any shell penetration beneath the design liquid level larger than 12 inches nominal pipe size (NPS), or any bottom penetration located within 12 inches of the shell; (b) The removal and replacement or addition of any shell plate beneath the design liquid level, or any annular plate ring material where the longest dimension of the replacement plate exceeds 12 inches; (c) The complete or partial (more than one-half of the weld thickness) removal and replacement of more than 12 inches of vertical weld joining shell plates, or radial welds joining the annular plate ring; (d) The installation of a new bottom; (e) The removal and replacement of any part of the weld attaching the shell to the bottom or to the annular plate ring; and (f) Partial or complete jacking of a tank shell.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid (60° F at 14.7 pounds per square inch absolute) petroleum hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters ~~by demise~~, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Pipes" or "piping" means a pressure-tight cylinder used to convey a fluid or to transmit a fluid pressure and is ordinarily designated "pipe" in applicable material specifications. Materials designated "tube" or "tubing" in the specifications are treated as pipe when intended for pressure service. This term includes piping and associated piping which is ~~utilized~~ used in the operation of an AST, ~~or emanating from or feeding an ASTs~~ or transfers oil ~~from or to or from~~ an AST (e.g., dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems, etc.). This term does not include line pipe and breakout tanks of an

interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC §60101 et seq.).

"Reconstruction" means the work necessary to reassemble a tank that has been dismantled.

"Repair" means any work necessary to maintain or restore a tank to a condition suitable for safe operation.

"Relocation" means the movement of an AST from one location to another location.

"Retrofitted" means the AST has been reconstructed or has had the bottom replaced.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Storage capacity" means the total volumetric capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with this chapter has no storage capacity.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks ~~as defined in 40 CFR Part 280.~~

~~"Tank vessel" means any vessel used in the transportation of oil as bulk cargo.~~

"Vaulted tank" means any tank situated upon or above the surface of the floor in an underground area (such as an underground room, basement, cellar, mine-working, drift, shaft, tunnel or vault) and providing enough space for physical inspection of the exterior of the tank.

### **9 VAC 25-91-20. Applicability.**

~~B. The requirements of this chapter apply may vary in their applicability to any given AST or facility depending on the part in which the requirement appears. The applicability of Parts II, III, IV, and V are differentiated as follows:~~

~~1. The provisions of Part II (9 VAC 25-91-100 et seq., Registration, Notification and Closure Requirements) of this chapter apply to: (i) an individual AST located within the Commonwealth of Virginia with an aboveground storage capacity greater than 660 gallons of oil, unless otherwise specified within this chapter; and (ii) all facilities in the Commonwealth of Virginia with an aggregate aboveground storage capacity greater than 1,320 gallons of oil, unless otherwise specified within this chapter.~~

### **9 VAC 25-91-30. Exclusions.**

~~B. In addition to the complete exclusions listed in subsection A of this section, the following are partially excluded from this chapter in that they need not comply with the requirements contained in Part III (9 VAC 25-91-130 et seq., Pollution Prevention Requirements) of this chapter:~~

~~C. In addition to the exclusions listed in subsections A and B of this section, asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute) are excluded for the purposes of from any requirement to install groundwater monitoring wells or groundwater protection devices or to conduct groundwater characterization studies under Part IV (9 VAC 25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) and Part V (9 VAC 25-91-180 et seq., Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements) of this chapter.~~

### **9 VAC 25-91-40. Compliance dates.**

B. Operators of facilities exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., facilities not engaged in the resale of oil) having an aboveground storage capacity of 25,000 gallons or greater of oil shall comply with Part III (9 VAC 25-91-130 et seq., Pollution Prevention Requirements) of this chapter on or before October 22, 1998~~within 120 days after the effective date of this chapter~~ unless otherwise specified in this chapter. If compliance with Part III of this chapter necessitates extensive upgrades to the existing facility design, these exempted operators may submit a proposed extended compliance schedule and supporting explanation to the board no later than September 22, 1998~~90 days after the effective date of this chapter~~. The board may approve an extended compliance schedule where the circumstances so warrant.

C. Operators of existing ASTs and facilities previously registered in accordance with the requirements of §62.1-44.34:19.1 of the Code of Virginia shall not have to resubmit the registration form until five years from the date of the initial registration unless title to that AST or facility is transferred (i.e., change of ownership) or the AST is ~~converted or~~ brought back into use after permanent closure, whichever occurs first.

D. Operators of facilities subject to Part IV (9 VAC 25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter that are brought into use after the effective date of this chapter shall submit a complete application meeting all applicable requirements of this chapter no later than 90 days ~~prior to~~before commencement of operations.

1. The operator must receive the department's approval of the ODCP by DEQ~~prior to~~before commencement of facility operations.

2. The operators of facilities that previously have previously met~~satisfied~~ the provisions of §62.1-44.34:15 of the Code of Virginia for ODCP submittal shall not be required to resubmit the ODCP until 90 days ~~prior to~~before the date that plan's approval expires. No later than Ninety days~~prior to~~before the expiration of approval of the ODCP, the facility operator shall submit an updated plan or certification of renewal of an existing plan according to 9 VAC 25-91-170 F.

~~E. As of July 1, 1997, an operator having obtained approval of the ODCP shall operate, maintain, monitor, and keep records pertaining to 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter and under the provisions of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter.~~

### **9 VAC 25-91-50. Statement of purpose.**

The purpose of this chapter is to: (i) establish requirements for registration of facilities and individual ASTs located within the Commonwealth; (ii) provide the board with the information necessary to identify and inventory facilities with ~~an aggregate storage capacity of greater than 1,320 gallons of oil or individual~~ ASTs with a storage capacity of greater than 660 gallons of oil; (iii) develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil relating to the prevention of pollution from new and existing aboveground storage tanks; (iv) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil that will ensure that the applicant can take ~~such~~ steps ~~as are~~ necessary to protect environmentally sensitive areas, ~~to~~ respond to the threat of an oil discharge, and ~~to~~ contain, clean up and mitigate an oil discharge within the shortest feasible time ~~and that the plans address, where plans must address concerns for~~ the effect of oil discharges on the environment ~~and as well as considerations of~~ public health and safety; and (v) provide requirements for operators of facilities and individual ASTs with an aggregate aboveground storage capacity of one million gallons or greater of oil to conduct a groundwater characterization study (GCS) within the geographic boundaries of a facility; to submit the GCS as part of the oil discharge contingency plan; to conduct a monthly gauging and inspection of GCS monitoring wells, monitoring of well headspace and sampling and laboratory analysis of GCS monitoring wells; and to gather all observations and data maintained at the facility and compile and submit them as an annual report to the board.

### **9 VAC 25-91-60. Administrative fees.**

A. Fees are assessed for review of oil discharge contingency plans ~~and for registration of an AST or a facility~~ according to the schedules contained in subsections B ~~and C~~ of this section. ~~A registration form or a~~ An application for review of a contingency plan ~~will not be accepted unless~~ must include the required fee, ~~has been received by the department.~~

3. Notifications and correspondence for which a fee is not applicable ~~should~~ shall be mailed to the department as specified in 9 VAC 25-91-70.

#### ~~B. Facility and AST registration.~~

1. ~~Registration fees shall be submitted for the following:~~

a. ~~Initial registration;~~

- b. New installations;
- c. Conversion (i.e., UST to an AST, storing a nonoil to an oil product, etc.);
- d. AST brought back into use after permanent closure;
- e. Registration renewal (every five years); or
- f. When title to a facility or AST is transferred (change of ownership).

2. Registration fees are as follows:

- a. An individual AST (new, existing, replaced or brought back into use after permanent closure) = \$25;
- b. One facility with one AST = \$25;
- c. One facility with two or more ASTs = \$50;
- d. Two facilities with one AST at each facility = \$50;
- e. Two facilities with one AST at the first facility and two or more at the other = \$75;
- f. Two or more facilities with two or more ASTs each = \$100;
- g. Three facilities with one AST each = \$75; or
- h. Three facilities with two or more ASTs at the first facility and one AST at each other facility = \$100.

3. An operator of an AST subject to the registration requirements of this chapter shall submit a fee of \$25 to the board for each such AST up to a maximum of \$50 per facility. An operator of a single facility shall submit a maximum of \$50 for the facility and all ASTs. An operator of multiple facilities shall submit a maximum fee of \$100 to the board to register all of their facilities and ASTs.

4. Registration forms will not be accepted by the board as complete unless the applicable fee has been paid. No fee is required for a "notification" of an AST replacement (i.e., relocation of existing AST), upgrade, repair, or closure.

€B. ODCP application.

3. Fees shall ~~only~~ be paid upon initial submittal of an oil discharge contingency plan by an operator. Renewals, additions, deletions, or changes to the plan are not subject to the administrative fee.

**9 VAC 25-91-70. Notices to the Department of Environmental Quality (DEQ).**

All written correspondence to the Department of Environmental Quality related to the requirements of this chapter, with the exceptions of (i) the correspondence which contains fees and therefore must be paid directly to the Treasurer of Virginia as specified in 9 VAC 25-91-60 A and (ii) variance petitions as specified in 9 VAC 25-91-160 shall be addressed to the cognizant DEQ regional office servicing the facility that is the subject of the correspondence. A list of regional offices and their addresses are available from the central office at the following address:

**9 VAC 25-91-100. Registration requirements.**

A. ~~Section 62.1-44.34:19.1 of the Code of Virginia requires an operator of a facility located within the Commonwealth with an aggregate aboveground storage capacity of more than 1,320 gallons of oil or an operator of an individual ASTs located within the Commonwealth with a storage capacity of more than 660 gallons of oil to~~ shall register such the facility or and ASTs with the board and with the local director or coordinator of emergency services unless otherwise specified within this chapter.

B. Although the term "operator" includes a variety of persons who may share joint responsibility for compliance with this chapter, in fixing responsibility for compliance with the registration requirements, ~~DEQ the department~~ shall look first to the operator who is the owner, or a duly authorized representative of the facility or AST.

C. ~~A duly authorized representative may submit the registration on the owner's behalf.~~

1. ~~A person is a duly authorized representative only if:~~

a. ~~The authorization is made in writing by the owner and indicates that the representative has signatory authority for the registration;~~

b. ~~The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (e.g., the plant manager, the operator of a facility or an AST, the superintendent, or a position of equivalent responsibility), or specifies an individual or a position having overall responsibility for environmental matters for the facility or company. A duly authorized representative thus may be either a named individual or any individual occupying a named position; and~~

c. ~~The written authorization is submitted to the department along with the registration form.~~

2. ~~Changes to authorization. If an authorization previously submitted is no longer accurate because a different individual or position has assumed responsibility for the overall operation of the facility or for environmental matters, a new authorization satisfying the requirements shall be submitted to the department prior to or together with any reports or information signed by that duly authorized representative.~~

3 Certification. Any person signing a registration document shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

D. ~~The operator who is the owner or a duly authorized representative~~ of a new facility or AST, ~~a converted facility or AST~~, or a facility or AST brought back into use after permanent closure shall register such facility or AST with the board and local director or coordinator of emergency services within 30 days after being brought into use.

E. Registration shall include the following information and other information that may be required ~~if approved~~ by the board:

3. Tank and piping information (e.g., storage capacity, product stored, type of design and construction standards); and

4. ~~Other information that may be reasonably requested by the board; and~~

5. ~~Owner certification of information.~~

F. ~~The operator who is the owner or a duly authorized representative~~ of the facility or AST shall renew the registration required by this section every five years or whenever title to the facility or AST is transferred (change of ownership), whichever occurs first.

G. ~~The operator who is the owner of~~ A facility or AST installed after the effective date of this chapter, including an AST or facility operated by the federal government, shall submit with its registration ~~not be registered without either (i) a review by the department of the permits, records of inspections, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code and its referenced model codes and standards, the BOCA%2F National Building Code and NFPA Code and obtained by the owner or a duly authorized representative from the local code officials or their designee or (ii) an inspection by the department. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with §36-98.1 of the Code of Virginia~~

## 9 VAC 25-91-110. Notifications.

A. ~~An~~ The operator who is the owner or a duly authorized representative of the facility or AST shall notify the board within 30 days after any AST:

1. Upgrade;
2. Major repair;
3. Alteration;
34. Retrofit,
5. Relocationplacement (i.e., relocating or repositioning of an existing AST); or;
- 4.6. Change in service; or (i.e., change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service).
7. Closure.

B. Notifications do not require a fee. The operator who is the owner shall submit with the notification copies of the permits and records of inspection required in accordance with the provisions of the Uniform Statewide Building Code and its referenced model codes and standards.

#### **9 VAC 25-91-120. Aboveground storage tank closure.**

A. Where a permit is not issued by the local building official or his designee for the closure or relocation of a facility or AST, the operator who is the owner shall provide After the effective date of this chapter, a facility or AST, including a facility or AST operated by the federal government, shall not be permanently closed without being registered and the fee paid and either (i) having a review performed by the department of the permits and inspections required in accordance with the provisions of the Uniform Statewide Building Code, the BOCA %2F National Building Code, and NFPA Code obtained by the owner or a duly authorized representative from the local code official or his designee or (ii) being inspected by the department.

1. For inspections by the department (e.g., where a permit is not issued by the local code official or his designee), at least 14 days notice to the department is required prior to before the commencement of closure or relocation operations. Notice shall be made by the owner or a duly authorized representative.

12. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with §36-98.1 of the Code of Virginia.

23. If the closure is in response to containment and cleanup actions that necessitate AST removal, the operator who is the owner or a duly authorized representative of the facility or AST shall immediately notify the local code official and the department.

~~B. Closure operations shall be reported to the department by the owner or a duly authorized representative within 30 days after the permanent closure operation is completed.~~

~~C. To close an AST or a facility, the operator who is the owner shall perform all activities contained in this section B. To relocate an AST, the operator who is the owner shall perform the activities contained in subsections 1, 3 and 4 of this section B. Closure operations shall include the following:~~

~~1. Removal of all liquids, sludges, and vapors from the AST and associated piping and dispose of All wastes removed shall be disposed of in accordance with all applicable state and federal requirements.~~

~~2. For tanks being closed in place, the tank shall be rendered all tanks being closed in place vapor free; and Provisions must be made provide for adequate ventilation to ensure that the tank remains vapor free; ensure that V vent lines shall remain open and are maintained in accordance with the applicable codes; All secure all access openings shall be secured (normally with spacers to assist ventilation); secure T the AST shall be secured against tampering and flooding; stencil in a readily visible location on the AST T the name of the product last stored, the date of permanent closure and the words "PERMANENTLY CLOSED"; shall be stenciled in a readily visible location on the AST. disconnect all P piping shall be disconnected; and ensure that A all pipes being closed in place shall be vapor free and capped or blind flanged.~~

~~3. An assessment of Assess the AST site shall be conducted prior to before completion of permanent closure operations.~~

~~a. In conducting the assessment, the operator who is the owner or a duly authorized representative shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. These locations shall be subject to the review approval of the board. Sampling and testing shall be conducted in accordance with established EPA-approved analytical methods or other methods approved by the board.~~

~~(1) The operator who is the owner or a duly authorized representative shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas, and a site map indicating the location of the closed AST and associated piping as attachments to the closure form.~~

~~(2) If contaminated soils, contaminated groundwater, free product as a liquid or vapor, or other evidence of a release is discovered, the operator who is the owner or a duly authorized representative shall immediately notify the board and conduct the cleanup in accordance with department requirements.~~

b. The department may consider an alternative to the soil sampling requirements of this subsection if the operator who is the owner or a duly authorized representative of the AST demonstrates to the board's satisfaction that:

4. Obtain A an closure-inspection conducted by either the department or the local building official, ~~as discussed in subsection A of this section.~~

~~DC.~~ When deemed necessary by the board, the operator who is the owner or a duly authorized representative of a facility or an AST that was permanently closed prior to the effective date of this chapter shall assess the site and close the AST in accordance with the requirements of this section.

~~ED.~~ The operator who is the owner or a duly authorized representative shall maintain all records relating to compliance with this section for a period of not less than five years from the date the board receives notice of the completed closure. ~~These records and shall be made~~make these records available to the board upon request.

### **9 VAC 25-91-130. Pollution prevention standards and procedures.**

~~A. Section 62.1 44.34:15.1 of the Code of Virginia provides the following requirements for existing~~This subsection applies to aboveground storage tanks at a facility with an aggregate aboveground storage capacity of one million gallons or greater of oil or for an existing individual aboveground storage tank with a storage capacity of one million gallons or greater of oil, unless otherwise exempted.

1. Inventory control and testing for significant variations.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output. Reconciliations of inventory measurements shall be conducted monthly for each AST. If ~~the~~a significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation. The operator shall reconcile physical measurements to 60°F at 14.7 pounds per square inch absolute. ~~The operator shall complete this investigation shall be completed~~ within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause of the inventory variation. The operator shall submit the testing method, schedule, and results of this additional testing ~~shall be submitted~~ to the board for review.

c. The operator shall keep ~~Inventory records shall be kept~~ of incoming and outgoing volumes of oil from each tank. The operator ~~All tanks shall be gauged~~ all tanks no less frequently than once

every 14 days and on each day of normal operation. ~~Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.~~

## 2. Formal inspections.

a. ~~The operator shall perform~~ Each AST shall undergo formal external and internal tank inspections for each AST. ~~The operator shall complete~~ initial formal internal and external inspections for an existing AST ~~shall be completed~~ on or before June 30, 1998, unless otherwise specified within this chapter.

(1) The operator shall perform the initial formal inspection of ~~All~~ newly installed ASTs ~~shall have initial formal inspections~~ within five years after the date of installation.

(2) Operators of facilities exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall complete the initial formal inspections on or before June 24, 2003 ~~within five years of the effective date of this chapter.~~

(3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and the board deems an inspection is ~~deemed necessary by the board.~~

b. The operator shall conduct ~~inspections shall be conducted~~ in accordance with the provisions of API Standard 653 or another procedure approved by the board. ~~If construction practices allow external access to the tank bottom,~~ the operator may perform a formal external inspection ~~utilizing~~ using accepted methods of nondestructive testing or another procedure approved by the board ~~may be allowed~~ in lieu of the internal inspection. The operator shall internally inspect ~~An~~ AST with a release prevention barrier or liner ~~installed shall be internally inspected~~ in accordance with the applicable provisions of API Standard 653 or API Recommended Practice 652 or another procedure accepted by the board.

c. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the inspection. The operator shall make repairs, alterations, and retrofits in accordance with the findings of the API 653 inspections, industry standards, and methods approved by the board.

d.e. The board may accept ~~An~~ API Standard 653 inspection conducted between January 1, 1991, and the effective date of this chapter ~~may be accepted by the board~~ if the operator provides supporting documentation to the board for review and approval.

## 3. Formal reinspections.

a. The operator shall perform an external reinspection of ~~Each~~ AST ~~shall undergo an external reinspection every five years~~ in accordance with the provisions of API Standard 653 every five years after the initial formal external inspection has been conducted.

b. The operator shall perform an internal reinspection of each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo an internal reinspection in accordance with the provisions of API Standard 653 every ~~10~~ten years after the initial formal internal inspection has been conducted.

(1) The board may require the internal reinspection sooner than ~~10~~ten years if there is an indication that the corrosion rate established by the initial internal inspection or a subsequent reinspection has increased.

(2) The board may extend the internal reinspection period ~~may be extended~~ beyond ~~10~~ten years if the operator can demonstrate to the board that an extension of the reinspection period is warranted. The operator shall provide supporting documentation to the board for review and approval at least six months prior to the date the reinspection is due.

c. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal reinspection unless the integrity of the AST is in question and the board deems an inspection is deemed necessary by the board.

d. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the inspection. The operator shall make repairs, alterations, and retrofits in accordance with the findings of the API 653 inspections, industry standards, and methods approved by the board.

#### 4. Secondary containment.

a. Each AST shall have secondary containment or another method approved by the board to contain a discharge of oil for detection and cleanup. Each secondary containment dike or berm or approved method shall be maintained, and evaluated, or and certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30 the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106.

b. The operator shall have this evaluation or and certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

c. If secondary containment cannot be certified to be in compliance, the containment must be upgraded, repaired, or replaced to meet the applicable requirements listed in paragraph a of this subsection.

d. The operator shall have the evaluation and certification performed on or before June 30, 1998 and every 10 years thereafter, unless otherwise exempted, by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the board.

e. At a minimum, the certification statement for the secondary containment must contain the PE's signature, seal, and the following "Based on my evaluation, I certify that each secondary

containment structure is in compliance with the applicable requirements of 40 CFR 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106."

fa. Operators of facilities exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed on or before June 24, 2003 ~~within five years after the effective date of this chapter~~ and every 10 years thereafter.

gb. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.

#### 5. Safe fill and shutdown procedures.

a. Each operator shall institute and keep records of safe fill, shutdown and transfer procedures, or equivalent measures the board establisheds, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur.

(1) ~~All receipts of oil shall be authorized by~~ The operator or facility personnel trained by the operator ~~who~~ shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete and shall keep records of each transfer, documenting the volume available in the tank, the volume to be transferred, the signature of the personnel monitoring the transfer and the date of the transfer. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

(2) ~~If an AST is unattended during transfer operations, the operator shall equip the AST~~ shall be equipped with a high level alarm or other appropriate mechanism approved by the board that will immediately alert the operator to prevent an overfill event. Activation of the high level alarm or other appropriate mechanism shall initiate an immediate and controlled emergency shutdown of the transfer, either by manual or automatic means. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator, both by sight and hearing, to prevent an overfill situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal in that station to activate. In addition, this system shall alarm on failure, malfunction, or power loss. The operator shall test ~~this high level alarm shall be tested~~ prior to each receipt of oil. The operator shall maintain Rrecords of this testing ~~shall be maintained~~ at the facility.

b. The operator shall equip ~~All~~ oil transfer areas where filling connections are made with vehicles ~~shall be equipped~~ with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (1997) (e.g., the maximum capacity of any single compartment of a vehicle loaded or unloaded in the transfer area).

c. If installed, an automatic shutdown system ~~utilized~~used during transfers of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. The operator shall test this automatic shutdown system ~~shall be tested prior to~~before each receipt of oil and maintain records of testing ~~shall be maintained~~ at the facility.

d. The operator shall equip ~~All~~ ASTs ~~shall be equipped~~ with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the operator must mark the storage capacity, product stored and tank identification number ~~shall be clearly marked~~ on the tank at the location of the gauge. The operator shall calibrate ~~These gauges shall be calibrated~~ annually.

6. Cathodic protection of piping and pressure testing of piping.

a. The requirement for cathodic protection of piping shall apply to buried piping only. The operator shall install and maintain ~~Cathodic protection shall be installed and maintained~~ in accordance with the following applicable publications: API 1632, ~~NFPA 30~~the Uniform Statewide Building Code and its referenced model codes and standards, NACE 0169, or NACE 0285. The operator shall protect ~~All~~ piping above ground ~~shall be protected~~ from corrosion using methods and procedures referenced in ~~NFPA 30~~the Uniform Statewide Building Code and its referenced model codes and standards, Chapter 2, Section 2-4.3 or a procedure the board approved by the board. The operator shall protect ~~P~~piping that passes through the wall of the containment berm or dike or under road crossings ~~shall be protected~~ from corrosion and damage using practices recommended in the publications listed in this subdivision.

b. The operator shall pressure test ~~All~~ piping ~~shall be pressure tested~~ as specified in this subsection or using an equivalent method or measure the board approved by the board at intervals not to exceed five years. The operator of an existing facility or AST shall complete the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall complete the initial test on or before June 24, 2003 ~~within five years after the effective date of this chapter.~~ The operator shall test ~~All~~ newly installed or repaired piping ~~shall be tested before being placed~~ it into service.

(3) The board may consider on a case-by-case basis requests for approval of other equivalent methods or measures ~~which that~~ conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9 VAC 25-91-160.

7. Visual daily inspection and weekly inspections.

a. ~~The operator or a duly authorized representative shall conduct a daily visual inspection for~~ on each day ~~of~~ in which normal operation occurs, but no less frequently than once every fourteen days, in the areas of the facility where this chapter applies. The facility personnel conducting the

inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

b. ~~The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every fourteen days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance toon the requirements within this chapter. The operator shall maintain the weekly checklist shall be maintained at the facility and provided it to the board upon request. The facility personnel conducting the inspection shall sign and date Tthis checklist, shall be signed and dated by the facility person or persons conducting the inspection and the checklist shall become part of the facility record.~~

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall develop the checklist on or before September 22, 1998. ~~within 90 days after the effective date of this chapter.~~

c. ~~Sample~~ At a minimum, the operator shall include the following items in the weekly inspection checklist for aboveground storage tank systems:

d. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the daily and weekly inspections. The operator shall make repairs, alterations and retrofits in accordance with API 653, industry standards, and methods approved by the board.

8. Training of individuals. To ensure proper training of individuals conducting inspections required by subdivision 7 of this subsection, the operator of a facility shall train personnel based on the following requirements:

a. Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision 8 c of this subsection. The operator or a third party may conduct the required training may be conducted by the operator or by a third party. The operator shall maintain the training program established shall be maintained to reflect current conditions of the facility.

(1) The operator of a new facility shall establish the training program within six months after ~~being brought~~ bringing the facility into use.

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall establish the training program on or before December 24, 1998. ~~within six months after the effective date of this chapter.~~

(3) Operators of facilities not exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a training program within six months after June 30, 1993, shall be deemed to be in compliance with this training

program requirement as of the effective date of this chapter, ~~so long as~~ provided that program reflects current conditions of the facility.

b. The operator shall conduct required training ~~shall be conducted~~ for facility personnel as applicable. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(1) The operator of a new facility shall conduct the personnel training within 12 months ~~after being brought~~ of bringing the facility into use and ~~prior to~~ before personnel conducting any inspection.

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall conduct the personnel training on or before June 24, 1999, ~~within 12 months after the effective date of this chapter.~~

(3) Operators of facilities not exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training within 12 months after June 30, 1993, shall be deemed to be in compliance with this personnel training requirement as of the effective date of this chapter, ~~so long as~~ provided that the training provided reflects current conditions of the facility and all inspections are current.

c. Training for personnel performing daily and weekly inspections shall address at a minimum:

(1) ~~Basic~~ Information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

d. The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years, whichever occurs first, and shall document this training in the facility records.

e. Only a person certified to conduct the inspection or test shall conduct ~~All~~ formal inspections and testing required by subdivision 2 of this subsection ~~shall be conducted by a person certified to conduct the inspection or test.~~ This certification shall be accomplished in accordance with the provisions of API Standard 650 and API Standard 653 or a procedure approved by the board. The operator shall maintain ~~Proof of this certification shall be maintained~~ in the facility records. The operator shall maintain ~~The~~ results of all tests and inspections required by subdivision 2 of this subsection ~~shall be maintained~~ at the facility or at another location ~~the board approved by the board~~ for the life of the tank, ~~but for no less than~~ or five years from the installation of the tank, whichever is longer.

9. Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9 VAC 25-91-170 A 18 and contained in the facility's approved ODCP. ~~These activities shall be inspected and approved by the department.~~

~~B. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing~~ This subsection applies to aboveground storage tanks at facilities with an aggregate aboveground storage capacity of less than one million gallons but equal to or more than 25,000 gallons of oil or for an existing individual aboveground storage tank with a storage capacity of less than one million but equal to or more than 25,000 gallons of oil, unless otherwise exempted.

1. Inventory control and testing for significant variations.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output. Reconciliations of inventory measurements shall be conducted monthly for each AST. ~~If the~~ a significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation. The operator shall reconcile physical measurements to 60°F at 14.7 pounds per square inch absolute. The operator shall complete this investigation ~~shall be completed~~ within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the board and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause for the inventory variation. The operator shall submit the testing method, schedule, and results of this additional testing ~~shall be submitted~~ to the board for review.

c. ~~The operator shall keep inventory records shall be kept~~ of incoming and outgoing volumes of oil from each tank. The operator ~~All tanks shall be gauged all tanks~~ no less frequently than once every 14 days and on each day of normal operation. Physical measurements shall be reconciled to 60°F at 14.7 pounds per square inch absolute.

2. Secondary containment.

a. Each AST shall have secondary containment or another method approved by the board to contain a discharge of oil for detection and cleanup. Each secondary containment dike or berm or approved method shall be maintained, and evaluated, or certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30 the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR Part 1910.106.

b. The operator shall have this evaluation or and certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

c. If secondary containment cannot be certified to be in compliance, the containment must be upgraded, repaired, or replaced to meet the applicable requirements listed in paragraph a of this subsection.

d. The operator shall have the evaluation and certification performed on or before June 30, 1998 and every 10 years thereafter, unless otherwise exempted, by a professional engineer (PE)

licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the board.

e. At a minimum, the certification statement for the secondary containment must contain the PE's signature, seal, and the following "Based on my evaluation, I certify that each secondary containment structure is in compliance with the applicable requirements of 40 CFR 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106."

f.a. Operators of facilities exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation completed on or before June 24, 2003, ~~within five years after the effective date of this chapter~~ and every 10 years thereafter.

g.b. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.

### 3. Safe fill and shutdown procedures.

a. Each operator shall institute and keep records of safe fill, shutdown and transfer procedures, or equivalent measures the board established by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. ~~All receipts of oil shall be authorized by~~ The operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the AST before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete and shall keep records of each transfer, documenting the volume available in the tank, the volume to be transferred, the signature of the personnel monitoring the transfer and the date of the transfer. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

b. The operator shall equip ~~All~~ oil transfer areas where filling connections are made with vehicles ~~shall be equipped~~ with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112 (1997) (e.g., the maximum capacity of any single compartment of a vehicle loaded or unloaded in the transfer area).

c. If installed, an automatic shutdown system ~~utilized~~ used during transfers of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. The operator shall test ~~This automatic shutdown system shall be tested prior to~~ before each receipt of oil and maintain records of testing ~~shall be maintained~~ at the facility.

d. The operator shall equip ~~All~~ ASTs ~~shall be equipped~~ with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the operator must mark the storage capacity, product stored and tank identification numbers ~~shall be clearly marked~~ on the

tank at the location of the gauge. The operator shall calibrate these gauges ~~shall be calibrated~~ annually.

4. Pressure testing of piping.

The operator shall pressure test ~~All piping shall be pressure tested~~ as specified in this subsection or using an equivalent method or measure the board approved by the board ~~by the board~~ at intervals not to exceed five years. The operator of an existing facility or AST shall complete the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall complete the initial test on or before June 24, 2003 within five years after the effective date of this chapter. ~~The operator shall test~~ All newly installed or repaired piping shall be tested before being placed ~~ing~~ it into service.

c. The board may consider on a case-by-case basis requests for approval of other equivalent methods or measures ~~which that~~ conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the board as specified in 9 VAC 25-91-160.

5. Visual daily inspection and weekly inspections.

a. ~~The operator or a duly authorized representative~~ shall conduct a daily visual inspection ~~for~~ on each day ~~of~~ in which normal operation occurs, but no less frequently than once every fourteen days, in the areas of the facility where this chapter applies. The facility personnel conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

(b. ~~The operator or a duly authorized representative~~ shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every fourteen days, of the facility in the areas where this chapter applies, using a checklist which contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The operator shall maintain the weekly checklist ~~shall be maintained~~ at the facility and provided it to the board upon request. The facility personnel conducting the inspection shall sign and date this checklist, ~~shall be signed and dated by the facility person or persons conducting the inspection~~ and the checklist shall become part of the facility record.

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall develop the checklist on or before September 22, 1998 ~~within 90 days after the effective date of this chapter.~~

c. ~~Sample~~ At a minimum, the operator shall include the following items in the weekly inspection checklist for aboveground storage tank systems:

d. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the daily and weekly inspections. The operator shall make repairs, alterations and retrofits in accordance with API 653, industry standards, and methods approved by the board.

6. Training of individuals. To ensure proper training of individuals conducting inspections required by subdivision 5 of this subsection, the operator of a facility shall train personnel based on the following requirements:

a. Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision 6 c of this subsection. The operator or a third party may conduct the required training. ~~may be conducted by the operator or by a third party. The operator shall maintain the training program established shall be maintained~~ to reflect current conditions of the facility.

(1) The operator of a new facility shall establish the training program within six months after ~~being brought~~ bringing the facility into use.

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall establish the training program on or before December 24, 1998 ~~within six months after the effective date of this chapter.~~

(3) Operators of facilities not exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a training program within six months after June 30, 1993, shall be deemed to be in compliance with this training program requirement as of the effective date of this chapter, ~~so long as~~ provided that program reflects current conditions of the facility.

b. The operator shall conduct required training ~~shall be conducted~~ for facility personnel as applicable. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(1) The operator of a new facility shall conduct the personnel training within 12 months ~~after being brought~~ of bringing the facility into use and ~~prior to~~ before personnel conducting any inspection.

(2) The operator of each facility exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall conduct the personnel training on or before June 24, 1999 ~~within 12 months after the effective date of this chapter.~~

(3) Operators of facilities not exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training within 12 months after June 30, 1993, shall be deemed to be in compliance with this personnel training requirement as of the effective date of this chapter, ~~so long as~~ provided that the training provided reflects current conditions of the facility and all inspections are current.

c. Training for personnel performing daily and weekly inspections shall address at a minimum:

(1) ~~Basic~~ Information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

d. The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years, whichever occurs first, and shall document this training in the facility records.

7. Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9 VAC 25-91-170 A 18 and contained in the facility's approved ODCP. ~~These activities shall be inspected and approved by the department.~~

**9 VAC 25-91-140. Performance standards for aboveground storage tanks newly installed, retrofitted, relocated, or brought into use.**

A. All ASTs shall be built in accordance with the applicable design standards adopted by Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other standard the board approves ~~by the board~~.

C. ASTs that have the tank bottom in direct contact with the soil shall have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, the operator shall install corrosion protection ~~shall be provided~~.

E. 1. Retrofitted ASTs

Existing ASTs that are retrofitted (~~reconstruction or bottom replacement~~) or brought back into use shall be brought into compliance with subsections A, B, C, and D of this section. The operator shall submit a schedule to the board of the work to be performed in order to bring the existing AST into compliance with new-built construction standards. The operator shall submit ~~This compliance schedule shall be submitted~~ to the board no less than six months ~~prior to~~ before the anticipated completion date.

2. Relocated ASTs

ASTs that are relocated shall be brought into compliance with subsections B, C, and D of this section. The operator shall conduct an assessment of the AST site before placing the AST into use.

F. Operators of ASTs installed, retrofitted (~~reconstruction or bottom replacement~~) or brought back into use shall also comply with 9 VAC 25-91-130 A or 9 VAC 25-91-130 B, whichever is applicable.

G. All newly installed ASTs shall be constructed and installed in a manner consistent with the applicable standards and requirements found in the Uniform Statewide Building Code and its referenced model codes and standards NFPA 30 and the BOCA<sup>®</sup> 2F National Building Code or other standards the board approved by the board. The operator shall obtain Approval and any applicable permits shall be obtained from the local building official before construction starts.

H. Compliance dates for subsections A through G of this section.

1. Operators of a newly installed, retrofitted or brought-back-into-use facility or AST shall comply with the requirements of this section within 30 days ~~prior to~~ before the facility or AST is being placed into service.

2. Operators of facilities exempted under §62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall comply with these requirements ~~on or before October 22, 1998~~ within 120 days of the effective date of this chapter.

### **9 VAC 25-91-150. Recordkeeping and access to facilities.**

A. Each operator of a facility subject to this chapter shall maintain the following records:

7. All records relating to facility and tank inspections; and

78. Any records required to be kept by statute or a regulation of the board.

B. These records shall be kept by the operator of a facility at the facility or at an alternate location the board approved by the board for a period of no less than five years unless otherwise indicated.

9 VAC 25-91-160. Variances to the requirements of Part III (9 VAC 25-91-130 et seq.) of this chapter.

A. General criteria for granting a variance on a case-by-case basis.

3. The board may grant a variance if:

a. The ~~petitioner applicant~~ demonstrates to the satisfaction of the board that the alternate design or operation will result in a facility that is equally capable of preventing pollution of state water, land, and storm drains from the discharge of oil from new and existing ASTs. If the variance would extend a deadline, the petitioner shall demonstrate that a good faith effort to comply with the deadline was made;

## B. Administrative procedures.

1. General requirements for the submission of a petition ~~by the owner or a duly authorized representative.~~ All petitions submitted to the board shall include:

a. ~~The owner~~petitioner's or duly authorized representative's name and address;

g. The potential impact of the variance on human health or the environment and an explanation of how justification of the proposed action's ability to provides equivalent protection of human health and the environment that is equivalent to the protectionas would compliance with the regulatory requirements provide;

i. Other information believed by the ~~applicant~~petitioner to be pertinent; and

j. The following statements signed by the ~~owner~~petitioner ~~or a duly authorized representative:~~

2. In addition to the general information required of all petitioners under subdivision 1 of this subsection, the petitioner shall submit other information the board requests as may be required by the board.

3. The petitioner shall submit Aall variance petitions and correspondence ~~shall be submitted to the following address:~~

## D. Variance by regulation for categories of ASTs.

1. ASTs totally off ground with all associated piping off ground, or with all associated piping double walled, shall not be subject to inventory control or testing for significant variation.

6. ASTs that meet the construction and installation standards of STI--F911-93, F921-93, or F941-94 or equivalent standards the board approves by the board shall not be subject to inventory control or testing for significant variation.

8. Vaulted tanks meeting UL 2245 or an equivalent standard the board approves d by the board shall not be subject to inventory control or testing for significant variation. The inspections required in sections 130.A.7 and 130.B.5 of this chapter need be conducted no more frequently than once every 31days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

11. A double walled AST shall not be subject to inventory control or testing for significant variation. The inspections required in sections 130.A.7 and 130.B.5 of this chapter need be conducted no more frequently than once every 31days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

**9 VAC 25-91-170. Contingency plan requirements and approval.**

A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the board. Section 62.1-44.34:15 of the Code of Virginia requires that all facility oil discharge contingency plans ~~shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the facility)~~ at the time the plan is submitted for approval. ~~and, in order to be approvable, a plan shall contain, at a minimum, the following requirements:~~

10. Identification and ~~insurance~~ assurance by contract or other means acceptable to the board of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. ~~This contract or agreement shall ensure a certain response within the shortest feasible time. The board will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 12 of this subsection, shall be included unless these capabilities are already on file with the board;~~

18. A detailed description of a system for early detection of a discharge to groundwater, utilizing up-gradient and down-gradient leak detection monitoring wells or other groundwater protection measures acceptable to the board (i.e., visual, interstitial, vapor and leak detection groundwater monitoring wells). ~~The operator shall operate, maintain, monitor and keep records of the system will be operated, maintained and monitored in the manner approved and be subject to inspection by the department, under the pollution prevention requirements of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter.~~ Operators subject to subdivision 13 a of this subsection may utilize such GCS wells to meet this requirement when approved by the board;

19. The procedures to be followed, upon detection of a discharge of oil, for testing and inspection of all tanks, piping and all oil transfer associated equipment that could reasonably be expected to be a point source for the discharge. ~~The operator shall conduct these procedures shall be conducted within the shortest feasible time, and include a progression of written procedures from visual inspection to formal testing and be that are conducted in accordance with recognized engineering practices;~~

21. A description of the security measures employed procedures used by ~~at the facility personnel~~ to avoid the possibility of a discharge of oil caused by intentional incidents, particularly any measures associated with threats to homeland security or unintentional damage to the facility; and

B. All nonexempt facility operators shall file with the board the application form for requesting approval of the contingency plan. This form shall be submitted along with the required contingency plan and shall be completed insofar as it pertains to the facility. The operator shall

send the submittal to the address specified in 9 VAC 25-91-60 A. The operator shall retain a copy of the plan and the board approval letter at the facility, readily available for inspection.

~~C. Contingency plans shall be filed with and approved by the board. The plan~~ The operator shall be submitted the plan to the board, at the address specified in 9VAC25-91-60 A. The operator shall retain a copy of the original plan with the facility-specific information and the approval letter ~~shall be retained~~ at the facility, ~~and shall be~~ readily available for inspection.

D. An operator of multiple facilities may submit a single contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county or if the facilities are similar in design and operation. The plan shall contain site-specific information as required by subsection A of this section for each facility. The operator shall place site-specific information ~~shall be placed~~ in appendices to the plan.

E. The operator shall review ~~the oil discharge contingency plans shall be reviewed,~~ updated it if necessary, and resubmitted it to the board for approval every 60 months from the date of approval unless significant changes occur sooner. Operators shall notify the board of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

2. An increase or decrease in the maximum storage or handling capacity of the facility that would change the measures to limit the outflow of oil, response strategy or operational plan in the event of the worst case discharge;

3. A decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge, or a change to the method approved to limit and contain the outflow of oil in the assessment of the worst case discharge;

5. A change in the method or operation ~~utilized~~ used for the early detection of a discharge to groundwater (i.e., change in a method of leak detection).

F. The operator shall submit ~~Updated plans or certification for renewal of an existing plan shall be submitted~~ to the board for review ~~and approval~~ not less than 90 days prior to expiration of approval of the current plan. Submittal of the certification for renewal for an existing plan shall be made in accordance with the provisions of subsection B of this section. The operator shall direct ~~All~~ notifications of changes, renewals, submissions and updates of plans required by this chapter ~~shall be directed to the respective department regional office servicing the facility that is the subject of the correspondence.~~

G. The board may require ~~An oil discharge exercise may be required by the board~~ to demonstrate the facility's ability to implement the contingency plan. The board will consult with the operator of the facility prior to before initiating an exercise. Where appropriate, the board will ensure coordination with federal agencies ~~prior to before~~ initiating ~~on~~ of an exercise.

H. ~~The board may, a~~After notice and opportunity for a conference pursuant to ~~§9-6.14:112.2-4020~~ of the Code of Virginia, the board may deny or modify its approval of an oil discharge contingency plan if it determines that:

J. The board may accept Aa Facility Response Plan (FRP) developed pursuant to §4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCA §2716 (1996), ~~may be accepted as meeting the requirements of subdivisions A 1 through A 22 of this section. The operator shall submit a copy of the FRP and a copy of the currently valid FRP approval letter for the facility for the board's review and approval by the board. The FRP shall contain a cross-reference in order to index pages for the specific requirements of the ODCP. In order for the board to accept the FRP, the FRP shall also contain the satisfaction of~~must satisfy the requirements of subdivisions A 13 a and A 18 of this section. The operator shall resubmit this information shall be resubmitted in accordance with the renewal period established by federal statute or regulation but in no instance shall the renewal period exceed five years. The operator shall board shall be notified notify the board of any plan amendments within thirty days of the amendment.

### **9 VAC 25-91-180. Groundwater characterization study (GCS).**

A. ~~Section 62.1 44.34:15 of the Code of Virginia requires the operator to apply to the board for approval of an ODCP. The ODCP shall be accompanied by other relevant information required by the board (e.g., The purpose of the groundwater characterization study (GCS), of each facility with an aggregate aboveground storage capacity of one million gallons or greater of oil). The purpose of this GCS is to determine baseline conditions and flow of groundwater within the geographic boundaries of the facility. The operator's results of the GCS shall be subject to the review and approval of the department and shall be submitted to the department as part of the Oil Discharge Contingency Plan (ODCP) referenced in Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter. The GCS wells are required by 9VAC25-91-170 A 13 a in the ODCP requirements.~~

B. ~~Section 62.1 44.34:15.1 of the Code of Virginia requires that t~~The operator of a facility with an aggregate capacity of one million gallons or greater of oil shall conduct monthly gauging and inspection, monitoring of well headspace, and quarterly sampling and laboratory analysis of all groundwater monitoring wells located at the facility to determine the presence of petroleum or petroleum by-product contamination. ~~The monitoring requirements of these GCS wells are in 9VAC25-91-190, GCS well monitoring.~~

C. ~~Although GCS monitoring wells may be approved for use as part of a leak detection system when approved by the board, Both the GCS well monitoring requirements in 9 VAC 25-91-190 and should not be confused with any requirement for the leak detection monitoring wells required by requirements in 9 VAC 25-91-170 A 18 apply.~~

### **9 VAC 25-91-190. GCS well monitoring.**

A. All GCS wells (required by 9VAC25-91-170 A 13 ~~a~~, ~~in the~~ ODCP requirements) shall be monitored as follows:

1. Perform Mmonthly gauging of GCS groundwater monitoring wells. To perform this requirement, the operator shall:
  - c. Correlate all Mmeasurements ~~shall be correlated~~ with mean sea level datum and measured to the nearest 0.01 foot.
2. Perform Qquarterly groundwater and vapor monitoring. To perform this requirement the operator shall:
  - a. Conduct Qquarterly vapor monitoring of all GCS wells ~~identified in the ODCP~~ GCS shall be conducted ~~prior to~~ before collecting quarterly groundwater samples.
  - b. ~~Quarterly vapor monitoring consists of e~~Collecting one monitoring well headspace measurement for each GCS well.
  - c. Conduct Qquarterly groundwater sampling (visual inspection) of all GCS wells ~~identified in the ODCP~~ GCS shall be conducted.
3. Perform Aannual groundwater monitoring for laboratory analysis. To perform this requirement, the operator shall:
  - a. ~~Annual groundwater sampling of all wells identified in the ODCP groundwater characterization study (GCS) shall be conducted.~~
  - a. ~~Annual groundwater monitoring consists of e~~Collecting groundwater samples for laboratory analysis-
  - e. ~~Groundwater samples shall be collected and analyzed~~ each sample for BTEX and TPH. ~~for each well.~~

B. ~~The GCS groundwater well-monitoring wells may should not be confused with the monitoring of groundwater wells utilized~~used to satisfy the requirements of 9 VAC 25-91-170 A 18 (i.e., leak detection wells) when approved by the board. Both the GCS well monitoring requirements in 9 VAC 25-91-190 and the leak detection monitoring well requirements in 9 VAC 25-91-170 A 18 apply.

### **9 VAC 25-91-200. Reporting; GCS well monitoring report.**

A. The operator shall compile and maintain at the facility Aall observations and data gathered as a result of the requirements in 9 VAC 25-91-190 and any other data obtained from ~~those same~~the GCS wells. The operator shall be maintained at the facility, compiled, and submitted these observations and data to the board annually in the following format:

B. The operator shall include in the annual GCS monitoring report~~shall include~~ the facility name and address, operator, and consultant, if any, who prepared the report, contact person and the date the report was submitted.

### 9 VAC 25-91-210. Response.

Should any observations or data indicate the presence of petroleum hydrocarbons in groundwater, the operator shall immediately report the results shall be immediately reported to the board and to the local director or coordinator of emergency services appointed pursuant to §44-146.19 of the Code of Virginia.

### 9 VAC 25-91-220. Referenced publications.

A. The following documents or portions thereof are referenced in this chapter:

~~3. National Fire Protection Association (NFPA) Standards:~~

~~a. NFPA 30, "Flammable and Combustible Liquids Code," 1996 edition;~~

~~b. NFPA 30A, "Automotive and Marine Service Station Code," 1990 edition;~~

~~54. 40 CFR Part 112 (1997), "Oil Pollution Prevention";~~

~~65. 29 CFR Part 1910.106 (1997/2002), "Flammable and Combustible Liquids";~~

~~76. Uniform Statewide Building Code (USBC), and its referenced model codes and standards, as promulgated by the Virginia Department of Housing and Community Development, 1996 edition;~~

~~87. Virginia Statewide Fire Prevention Code (SWFPC), 1996 edition;~~

~~9. Building Officials & Code Administrators International, Inc. (BOCA<sup>®</sup>); BOCA National Building Code, 1996 edition:~~

~~a. Chapter 32—Flammable and Combustible Liquids;~~

~~b. Chapter 23—Hazardous Materials; and~~

~~108. Steel Tank Institute (STI), Standards and Recommended Practices:~~

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

Based on current statutes, there are no alternatives to this regulation that are less burdensome. DEQ will evaluate legislative amendments to further lessen the administrative requirements of this regulation on the regulated community.

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

Only one public comment was received as the result of the Notice of Periodic Review published in the Virginia Register. The comment requested that the current regulatory language be amended to exempt above-grade vaulted (“double-walled”) ASTs from all requirements of Part III (the Pollution Prevention section) of the Virginia AST regulations. This request was made apparently because it is difficult or impossible for the commenter to inspect his tanks internally in the manner specified by the API 653 standard which is referenced in Part III. However, it is not necessary to change the regulation in order to satisfy the commenter’s concerns. The regulation excludes ASTs that have a storage capacity of 12,000 gallons or less from the internal inspection requirement and, for ASTs that are greater than 12,000-gallon capacity, the regulations allow “other methods” of inspection to be approved by the Board. It also includes a provision that allows tank owners to request a variance from the requirement.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

The regulation is clearly written and easily understandable, however, we are proposing some changes to improve its clarity where potential interpretation issues have been identified.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

Within three years after the effective date of this regulation, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

Upon review of the department's analysis, the board shall confirm the need to: (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board's

decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation does not have an adverse impact on the institution of the family and family stability.